

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 35 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX

Versus

HRUDAYESH B PATEL

Appearance:

MR MANISH R BHATT for Petitioner

MR Manish Shah for Mr. JP SHAH for the Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/05/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred for the opinion of this Court the following

questions under section 27(1) of the Wealth Tax Act, 1957.

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in modifying the direction given by the Commissioner of Wealth-tax to the Wealth Tax Officer to reframe the assessment by directing the WTO to apply Rule 1BB when the Tribunal has held that the order was legal and was not liable to be set aside ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the Wealth-tax Officer should value the property by applying the provisions of Rule 1BB of the Wealth-tax Rules which came into force on 1st April, 1979 ?"

2. The reference relates to the assessment years 1976-77 to 1978-79. Original assessments were completed by Wealth Tax Officer on 3.12.1979 under section 16(3) of the Wealth Tax Act. The Commissioner found that the assessee owned a flat in block no. 6-C of Sea Face Housing Society, Bombay. The WTO determined the value of the said property for all the years at Rs. 1,32,500/-. The Commissioner found that during survey operation the adjoining plots bearing C-12 and B-12 were sold for Rs. 2 lakhs each in December, 1974 and January, 1975. The Commissioner therefore, found that the order of the assessment as made by the WTO for each of the years was erroneous and prejudicial to the interest of the revenue. He therefore, set aside the order for each of these years after hearing the assessee and directed the WTO to refer the case to the valuation cell and re-frame the assessment on the basis of the report of the valuation cell after giving an opportunity of hearing to the assessee. In an appeal filed by the assessee, while upholding the jurisdiction of the Commissioner to revise assessment under section 25(2) of the Act, the Tribunal accepted the assessee's contention that the property being self-occupied, valuation thereof should be made in accordance with Rule 1BB of the Wealth-tax Rules. The Tribunal therefore, directed the WTO to apply rule 1BB and then decide whether a reference to valuation officer was called for. The Tribunal held that Rule 1 BB being procedural and mandatory, applied to all pending proceedings before all the authorities. It was held that since the matter had already been remitted to the WTO, the WTO should apply rule 1BB for all the years in question.

3. The contention of the Revenue that rule 1BB cannot be invoked does not now survive in view of the decision of the Hon'ble Supreme Court in CWT vs. Shravan Kumar Swarup and sons reported in 210 ITR, 886 in which while construing the provisions of Rule 1BB of the said Rules, the Supreme Court held that the said rule partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings pending on April 1, 1979 when the rule came into force. The Supreme Court affirmed the ratio of the decision of this Court in CWT vs. Kasturbhai Mayabhai, reported in 164 ITR, 107 in which it was held that the benefit of rule 1BB must relate back to the date on which section 7(1) was made subject to rules. Similar view was taken by this Court in CWT vs. Niranjan Narottam, reported in 173 ITR, 693.

4. In this view of the matter, we hold that the Tribunal did not commit any error in holding that the provisions of Rule 1BB of the Wealth Tax Rules should be applied to the assessee's case in respect of these years and WTO should re-frame the assessment on that basis. Both the questions are therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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